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**From:** ditzikr@home.com  
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**Subject:** RE. Fed Reg. Request For Comments - USPTO

In Re: Federal Register: Request for Comments on International Effort to Harmonize the Substantive Requirements for Patent Laws [Docket No. 010307056-1056-01] RIN 0651-AB36

Issue #13.

(13) International Harmonization of the Obviousness Requirement for Patentability.

The United State law under 35 USC 103 (Obviousness) should be changed to harmonize with most other countries. Presently US claims are required to be "non-obvious", which is defined in the US to mean "non-obvious to a person with an ordinary skill in to art". This US Law should be changed to: a substantial showing of an "Inventive Step" by the inventor and/or patent owner.

This "Inventive step" requirement is required in most other countries instead of non-obviousness.

Such harmonization changes should include a requirement that the inventor or assignee

clearly describe a problem to be solved and provide a description of the solution -- also as required by other countries. Other patentability requirements of subject matter (35 USC 101), usefulness (35 USC 101), and novelty (35 USC 102) may continue to be examined by the Patent Offices.

The new "Inventive Step" requirement should be very clearly defined by evidenced submitted. Inventive Step requirements should be defined as:

1. A description of a problem to be solved, and a description of the inventor's solution, submitted with the patent application.
2. Evidence of building a prototype and testing.
3. Evidence of sales or attempted sales.
4. Evidence of offering to sell or license the invention to other entities.
5. Evidence of attempt to raise funding for a business to commercialize the invention.

During the patent application process, only #1 above shall be examined and evaluated by the Patent Office. The remaining four requirements (#2 - #5) need only be examined later if necessary by a court of law. Only if the patent becomes involved in litigation is it necessary for a court to examine the evidence of requirements #2 - #5. Presumption of the Patent Office shall be to give the inventor the benefit of doubt that he/she did or will honestly attempt commercialization. Purposeful deception of the Office by the inventor shall disqualify the grant of the patent, or invalidate an issued patent. Since it is not always possible to accomplish all the requirements for all types of inventions, evidence of only two of the four requirements (#2 - #5) must be necessary to prove "Inventive Step" in court proceedings. The overall objective of the above new requirements is commercialization of new inventions -- which is a goal of all patents systems.

This change in the US Patent Law and other countries, will greatly reduce the time and cost of examining patent applications, without sacrificing quality. Requirements of subject matter, usefulness and novelty may still be examined by the Office. Long and involved arguments in many office actions and/or litigation, concerning the meaning of non-obviousness, is a waste of time and money (i.e. valuable resources) for both the government and its citizens.

We also propose that Patent Laws worldwide be changed to provide real economic incentives to large Corporations and institutions to purchase or license new patented technology from small business or individuals. New business operations laws should be implemented which will provide real incentives that new technology will be commercialized.

A new law should require large entities, which receive an offer to licensing-in technology by any patent owner to fairly evaluate the said invention. The only requirement for such a submission is that the patent or patents be in the general field of their business. A large entity may be defined as large for-profit corporations or large non-profit institutions. After receiving the offer for licensing, entities must provide a reasonable evaluation of the patented technology. The entity must either 1) engage in negotiations with the patent owner, or 2) provide a written letter to the applicant briefly explaining why they are not interested.

The patent owner would then be required to save all documentation as evidence of the Inventive Step requirement. However, Requirement to accept external submissions would not apply to small businesses. In addition, the law shall state that if large entity rejects this submission, and it later reconsiders and enters negotiations with the patent owner at a later time, then the patent owner may offer a non-exclusive license at a rate (or lump sum payment) at twice (some multiple) the rate negotiated and agreed to with other parties. Therefore, there will result a clear incentive to seek and license outside technology from small and medium size companies.

The result is that the economies of each country that implements the above laws, will greatly benefit from increased technological research, innovation and commercialization of new technology.

Regards,  
Richard J. Ditzik  
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